

ONCALL

5/16/13

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May 15, 2013

The Honorable Denise L. Cote  
United States District Court Judge  
Southern District of New York  
500 Pearl Street, Room 1610  
New York, NY 10007

D 24  
5/16/13

*Re: In re: Electronic Books Antitrust Litigation, No. 11-md-02293-DLC (S.D.N.Y)*  
*also file in: 12-cv-2826-DLC*

Dear Judge Cote:

I am writing on behalf of non-party Amazon.com, Inc. It had been our understanding of the Court's directions from May 8 that, after Amazon served its proposed redactions to the pre-trial filings, the parties were to meet and confer to discuss (and resolve, to the extent possible) the redactions prior to the time they were submitted to the Court. That was the process we followed with Penguin, for example. From Amazon's perspective, we hoped at the conference with Apple to discuss: (1) whether Apple would agree to submit a redacted version of some or all of the pretrial filings; and (2) whether Apple would confirm that, by allowing an unredacted reference to a portion of a proposed trial exhibit in a pretrial filing, Amazon would not be waiving its right to seek redaction of other portions of that trial exhibit not disclosed in the pretrial filings. Unfortunately, Apple did not respond to our request for a conference.

We have now had the benefit of reviewing Apple's various letters to the Court and the Court's Memo Endorsed Letter of May 14 that clarifies that the issue of redacting trial exhibits is still to be resolved. As a result, we are prepared to withdraw many of the prior proposed redactions to Apple's pretrial submissions.

If our understanding is correct that, by agreeing to the filing of an unredacted reference to a proposed trial exhibit, Amazon does not waive its right to seek redaction of other portions of that exhibit, Amazon seeks no redactions to Apple's Memorandum of Law and seeks only the redactions reflected in the following paragraphs from Apple's Proposed Findings of Fact:

- ¶ 43 ("\$2 to \$6 loss" can be unredacted; the rest should remain redacted)
- ¶ 57 (second bullet)
- ¶ 66 (a copy of DX-118 is attached for context)

The Honorable Denise L. Cote

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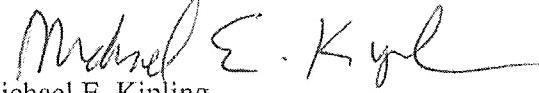
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- ¶ 202 (second bullet)
- ¶ 215 (length of terms)
- ¶ 218
- ¶ 263 (Author's name)
- ¶ 266 (§ iii only)
- 286

Amazon appreciates the opportunity for input on this important issue.

Sincerely,

KIPLING LAW GROUP PLLC

  
Michael E. Kipling  
Counsel for Non-Party Amazon.com, Inc.

cc: Counsel for All Parties